

BAIL SLIP

The Appellants/Accused viz, 1 Madasamy, 2. Francis, were directed to be released on bail as per order of this Court dated 3.10.2001 made in CrI.M.P.No. 6883/2001 in CrI.Appeal.No. 918/2001.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01-08-2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN
CRIMINAL APPEAL No.918 of 2001

1. Madasamy
2. Francis ..Appellants /accused

-vs-

State through Inspector of Police
Kolakombai Police Station
Crime No.93/99
Nilgiris District ... Respondent/complainant

This appeal is filed under Section 374 f Cr.PC against the Judgment made in S.C.No.21/1999 dated 3.9.2001 on the file of the District and Sessions Judge, Uthagamandalam, Nilgiris District.

For appellants : Mr.R.Vinayaga Vishnu
For respondent : Mr.V.R.Balasubramaniam,
Additional Public Prosecutor

JUDGMENT

This appeal has been preferred against the Judgment in S.C.No.21 of 1999 on the file of the District and Sessions Judge, Uthagamandalam, Nilgiris District.

2. Both the accused have been charged under Sections 427 of IPC and under Section 3(1) of Tamil Nadu Public Properties (Damages and Prevention) Act (hereinafter referred to as "TNPPDP Act") 1992.

3. The learned Judicial Magistrate, Coonur had taken the case on file as PRC 5 of 1994 and after the accused had appeared before him on summons, copies under Section 207 of Cr.P.C.were furnished to the accused and since the case is exclusively triable by the Court of Sessions, the learned Judicial Magistrate had committed under Section 209 of Cr.P.C.. On appearance before the learned Sessions Judge, the charges under Sections 427 and 3(1) of the TNPPDP Act. were framed against the accused and when questioned, the accused pleaded not guilty.

4. On the side of the Prosecution , P.Ws 1 to 12 were examined. Exs P1 to P16 were exhibited and M.Os 1 to 5 were marked.

5. P.W.1 is the complainant. He is the conductor in Tamil Nadu State Transport Corporation bus bearing Registration No.TN-45-N-0807 and according to him at about 8.30p.m., on the date of the occurrence, the bus, who was taken by the driver from Coonur to Thutharmattam and it reached the destination at 9.45p.m and it was stationed at the bus stand along with two other buses bearing Registration Nos.TN-43-N-0243 and TN-29-N-0389 and there was incessant rain at that time and he along with the driver of the bus were taking shelter near a shop. Along with him, Muniyandi, Kanagasundaram, Arumugam and Mohan, the workers of the depot were also present. At that time, he had heard a sound which made them to rush to the place of occurrence where they saw A2 Francis breaking the window pan glasses of the bus bearing Registration No.TN-29-N-0389 with wooden logs, M.O.1 and M.O.2 respectively. According to P.W.1, A1 and A2 have smashed two window glass pans in TN-29-N-0389 and also six side glasses on their right side and also front and rear glass pans in buses bearing Registration Nos.TN-43-N-0243 and also in TN-45-N-0807. The accused, on seeing P.W.1 and other witnesses approaching them, took to their heels, but he along with the other witnesses successfully prevented the accused from escaping, caught hold of them and produced in the police station along with Ex P1 complaint. M.O.1 and M.O.2 wooden logs were also produced by them under Form 95 which is marked as ExP2. He has assessed the damage to the State Transport Corporation buses as Rs.27,500/-.

5a. P.W.2 Arumugam is the driver of the State Transport Corporation Bus bearing Registration No.TN-29-N-0389 . He has also corroborated the evidence of P.W.1 to the effect that the bus bearing Registration Nos. TN-45-N-0807, TN-43-N-0243 and TN-29-N-0389 were stationed at the bus stand, the accused with M.O1 and M.O2 have smashed all the window screen glasses and window glasses and caused damage to the State Transport Corporation buses and that he along with P.W.1 and other witnesses had caught hold of the accused and produced the accused in the police station and that P.W.1 had preferred Ex P1 complaint.

5b. P.W.3 is another driver of the State Transport Corporation bus and also corroborated the evidence of P.W.1 and P.W.2 and had helped P.W.1 and P.W.2 to apprehend the accused and produced them in the police station and that P.W.1 had preferred Ex P1 complaint.

5c. P.W.4 also helped P.W.1 to P.W.3 to apprehend the accused at the place of occurrence along with M.O.1 and M.O.2. P.W.5 would depose that on 19.4.1999 at about 9.30p.m., he got down from the bus and rushed to the

place where the accused had damaged three State Transport Corporation buses and saw the damages caused to the buses. But he has not specifically identified the accused.

5d. P.W.12 is the then Inspector of Police, kolakombai police station, who had received the complaint Ex P1 from P.W.1 on 19.4.1999 at about 23.30 hours and registered the case under Kolakombai Police Station Crime No.93 of 1999 under Sections 336,427 and 3(1) of TNPPDP Act. Ex P13 is the first information report. According to him, both the accused were produced by the complainant and other witnesses at the time when Ex P1 complaint was preferred by P.W.1 and that M.O1 and M.O2 were also produced by P.W.1 along with the accused, which were recovered under Form 95 Ex P2. On 20.4.1999 at about 00.15 hours, he had visited the place of occurrence and prepared Ex P3 observation Mahazar and had drawn the rough sketch Ex P14 in the presence of P.W.6 . Through P.W.7 Photographer, he had arranged to take photographs for the scene of occurrence. Photos and negatives are Ex P8 series. He has also recovered M.O.3 to M.O.5 glass pieces from the scene of occurrence under Ex P4 to Ex P6 recovery mahazar in the presence of P.W.6 and other witnesses. He had made a requisition to the Motor Vehicle Inspector to inspect the damaged State Transport Corporation buses under Ex P15.

5e. P.W.8 is the Assistant Engineer in Tamil Nadu State Transport Corporation, Coonur, who would depose that he had inspected the damaged State Transport Corporation buses and assessed the damages to the State Transport Corporation buses as Rs.25,700/- (Rs.6,400/- to the bus bearing Registration No. TN-45-N-0807, Rs.6,100/- to the bus bearing Registration No. TN-45-N-0243 and Rs.12,600/- to the bus bearing Registration No. TN-29-N-0389 and he has also included the cost of repair as Rs.600) Ex P16 is the assessment report marked through the Investigating Officer, P.W.12.

5f. P.W.9 is the Branch Manager of the Coonur State Transport Corporation Depot. According to him, he had also inspected the damaged State Transport Corporation buses on 19.4.1999. P.W.10 is the Motor Vehicle Inspector, who had inspected the damaged State Transport Corporation buses and issued Ex P 10 report stating that there is no mechanical defect in the buses.

5g. P.W.11 is the doctor, who had examined the accused on 20.4.1999 and issued Ex P11 certificate for A1 and Ex P12 is the certificate for A2. On examination, he found the smell of alcohol in their breath. P.W.12 after completing the investigation has filed the charge sheet against the accused on 26.5.1999 under Sections 427 of IPC and 3(1) of TNPPDP Act.

6. When incriminating circumstances under Section 313 Cr.P.C. were put to the accused, they would deny their complicity with the crime. The

learned trial Judge, after scanning the evidence both oral and documentary, has held that the charges under Section 427 of IPC and under Section 3(1) of TNPPDP Act have been proved against the accused beyond any reasonable doubt and accordingly convicted the accused under Section 427 of IPC and sentenced them to undergo six months simple imprisonment each and slapped a fine of Rs.5000/- each with default sentence. The learned trial Judge has convicted the accused under Section 3(1) of TNPPDP Act and sentenced them to undergo one year rigorous imprisonment each and a fine of Rs.7,000/- each with default sentence. Aggrieved by the findings of the learned trial Judge, the accused have preferred this appeal.

7. Now the point for determination in this appeal is whether the findings of the learned trial Judge is sustainable for the reasons stated in the memorandum of appeal?

8. Heard Mr. R.Vinayaga Vishnu, learned counsel appearing for the appellants and Mr.V.R.Balasubramaniam, learned Additional Public Prosecutor for the State and considered their respective submissions.

9. The Point:
The learned counsel appearing for the appellants would contend that the first information report would not have been lodged as alleged by the prosecution. He would point out that as per the evidence of P.W.1, the complaint was preferred only at the bus stand, after 11.30 p.m and it took half an hour for P.W.1 and other witnesses to reach the police station along with the accused. But P.W.12 the Investigating Officer, in his evidence has admitted that the complaint was preferred by P.W.1 at 11.30p.m., on 19.4.1999, which cannot be possible. Relying on this discrepancy in the evidence, the learned counsel appearing for the appellants would contend that after due deliberation with the police officials, the complaint was preferred only at the police station, inducting the accused, who are innocents.

10. No doubt, there is a discrepancy in the evidence of P.W.1 and the evidence of P.W.12 regarding the filing of the first information report. But that itself will not derive us to the conclusion that the case has been foisted against the accused. P.W.2 and P.W.3 have corroborated the evidence of P.W.1 to the effect that the commission of offence was done only by the accused and that after the rain was stopped, he took the accused to the police station, after preferring the complaint around 12.00 in the mid night.

11. Both P.W.2 and P.W.3 have corroborated the evidence of P.W.1 to the fact that the State Transport Corporation buses bearing Registration Nos. TN-45-N-0807, TN-43-N-0243 and TN-29-N-0389 were damaged only by the accused with M.O.1 and M.O.2 logs and they have identified both the accused in the Court by saying that both the accused have smashed the glasses in the window pan and also side glasses in the buses at about

10.30p.m., on 19.4.1999 and that after causing damage to the bus, the accused took to their heels and they chased the accused and caught hold of the accused with M.O.1 and M.O.2.

12. There is no motive attributed against the witness to depose falsely against the accused. Both the accused under the influence of alcohol have committed the offence as seen from the evidence of P.W.11, the doctor, who had examined the accused on 20.4.1999 at about 3.50p.m., Under such circumstances, I do not find any reason to interfere with the findings of the learned trial Judge that both the accused are guilty under Sections 427 of IPC and 3(1) of TPPDP Act.

13. The learned counsel appearing for the appellants would contend that there is no bad antecedent against the accused and that due to political motive, demanding to release some of the political people to which party they belong, the accused have damaged the public property inadvertently and that there is no other criminal case is pending against the accused. The learned counsel appearing for the appellants would contend that both the accused were in jail for more than 31 days. Under such circumstances, I am of the view that sentence alone can be modified by showing some leniency and also taking into consideration that there is no bad antecedent against the accused.

14. In fine, the appeal is dismissed while confirming the conviction under Sections 427 of IPC and 3(1) of TNPPDP Act against A1 and A2 made by the learned District and Sessions Judge, Uthagamandalam, Nilgiris District in S.C.No.21 of 1999, the sentence alone is modified to that of the period already undergone instead of six months simple imprisonment each under Section 427 of IPC and one year rigorous imprisonment each under Section 3(1) of TNPPDP Act. The fine amount will sustain.

sg

Sd/-
Assistant Registrar,

/true copy/

Sub Assistant Registrar.

To

1. The District and Sessions Judge., Uthagamandalam, Nilgiris District.
 2. The Judicial Magistrate, Coonur.
 3. -do- through the Chief Judicial Magistrate, Uthagamandalam
 4. The Public Prosecutor, High Court, Madras
 5. The Inspector of Police, Kolakombai Police Station, Nilgiris District.
- + One cc to M/s N. Chandrasekaran, Advocate SR 47708

GK (co)

sg 8/8/07

CrI.A.No.918/2001

01.08.2007